

**Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Zwerling Broadcasting System, Ltd)	NAL/Acct. No. MB-202241410024
KSCO(AM), Santa Cruz, California)	FRN: 0006023261
)	Facility ID No. 41594
)	Application File No. 155525

FORFEITURE ORDER

Adopted: December 14, 2022**Released: December 15, 2022**

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order*, the Media Bureau (Bureau) issues a monetary forfeiture to Zwerling Broadcasting System, Ltd (Zwerling), in the amount of twenty thousand dollars (\$20,000). The forfeiture stems from our determination that Zwerling willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended (Act), and sections 73.1350, 73.1560(a)(1), 73.1635, 73.1690(b), and 73.1745(a) of the Commission's rules (Rules) by operating KSCO(AM), Santa Cruz, California (Station) at a variance from its authorized parameters.

II. BACKGROUND

2. Since 1970, the Station has been authorized to operate in a non-directional mode at 10 kilowatts nominal power during daytime hours, and in a directional mode at 5 kilowatts nominal power during nighttime hours.¹ In 2016, the Enforcement Bureau received complaints about the Station's operations.² When the Enforcement Bureau contacted Zwerling about the complaints, Zwerling admitted the Station was operating non-directionally at night at 1 kilowatt. The Enforcement Bureau informed Zwerling that it needed to apply for an STA and then return the Station to its licensed parameters, or apply to modify the Station's authorization to reflect the manner in which it had been operating. Despite this, Zwerling did not request STA or apply to modify the Station's authorization.

3. In 2020, the Commission received another complaint about the Station's operations. The complaint alleged that the Station had been operating at night in non-directional mode at 1 kilowatt for more than 30 years. When Media Bureau staff contacted Zwerling about the complaint, Zwerling admitted the Station had been operating in non-directional mode with a nominal power of 1 kilowatt at night. Zwerling indicated that the Station had "operated for more than thirty years now, at 1000 watts non-directional at night."³ Zwerling asserted that "in the directional mode [the Station] lose[s] coverage to a significant amount of [its] primary service area."⁴ Zwerling argued that, because of this coverage

¹ See Application File No. BL-12621.

² E-mail from Tree Sitter to David Hartshorn, FCC San Francisco Office (April 18, 2016 9:38 PM PDT); E-mail from Tree Sitter to David Hartshorn, FCC San Francisco Office (April 25, 2016 8:03 AM PDT).

³ E-mail from Michael Zwerling, Zwerling Broad. System, Ltd, to Victoria McCauley, Attorney/Advisor, Audio Division, Media Bureau (Mar. 18, 2022, 11:19 EDT).

⁴ *Id.*

issue, it “determined that in the absence of any interference complaints from any consumers nor broadcasters . . . , it would NOT be in the public interest, convenience, and necessity for us to cut out coverage to roughly 75% of the population we are here to serve.”⁵ Zwerling also noted that the Station “has been an incredibly valuable, highly-praised safety resource to Santa Cruz and all communities of the Monterey Bay Area during times of emergencies, i.e., fires, storms, floods, earthquakes, power outages, etc. since day one of its now nearly 75 year operation which began on September 21, 1947.”⁶

4. On October 19, 2022, we released a *Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture (NAL)* that proposed a forfeiture in relation to the Station’s non-conforming operations.⁷ In the *NAL*, we noted that the base forfeiture for operating without an instrument of authorization is \$10,000, and the base forfeiture for failure to file required forms or information is \$3,000.⁸ We concluded that an upward adjustment of the base forfeiture amounts was appropriate given that (1) the Station’s non-conforming operations spanned the entirety of its current license term, and continued to that day, and (2) the violations were intentional and continued after Commission staff specifically instructed Zwerling that it needed to take appropriate steps to bring the Station into compliance. We noted that, even if we were to accept the Station’s claims about providing safety information to its listeners, neither this nor a desire to improve the Station’s nighttime coverage of its primary service area would excuse its non-conforming operations.⁹ Accordingly, we proposed a total forfeiture of twenty thousand dollars (\$20,000).

5. Zwerling filed a response to the *NAL* on November 16, 2022.¹⁰ We consider it herein.

III. DISCUSSION

6. The forfeiture amount proposed in this case was assessed in accordance with section 503(b) of the Act,¹¹ section 1.80 of the Rules,¹² and the Commission’s *Forfeiture Policy Statement*.¹³ In assessing forfeitures, section 503(b)(2)(E) of the Act requires that we take into account the nature, circumstances, extent, and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.¹⁴ The Commission has established forfeiture guidelines, base penalties for certain violations and has identified criteria that it considers when determining the appropriate penalty in any given case.¹⁵ Under these guidelines, we may adjust a forfeiture downward for violations that are minor, violations that are voluntarily disclosed, where there is a history of compliance, or where there is an inability to pay.¹⁶ We may adjust a forfeiture upward for violations that are egregious, intentional, repeated, that cause

⁵ *Id.*

⁶ *Id.*

⁷ *Zwerling Broad. Sys., Ltd*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, DA 22-1102 (MB Oct. 19, 2021) (*NAL*).

⁸ *Id.* at 3, para. 8.

⁹ *Id.* at 4, n.26.

¹⁰ *Zwerling Broad. Sys., Ltd*, Response (dated Nov. 16, 2022) (Response).

¹¹ 47 U.S.C. § 503(b).

¹² 47 CFR § 1.80.

¹³ *Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

¹⁴ 47 U.S.C. § 503(b)(2)(E).

¹⁵ 47 CFR § 1.80(b)(10).

¹⁶ *Id.* at Table 3.

substantial harm or generate substantial economic gain for the violator, where there is an ability to pay, or where there is a history of prior violations of FCC requirements.¹⁷

7. We will not, as Zwerling requests, reduce or cancel the proposed forfeiture. Zwerling has not demonstrated that any of the downward adjustment factors are applicable here. Instead, Zwerling cites the fact that the Station's non-conforming operations allowed it to "serve those in our broadcast area who would not otherwise have had access to the news and information they needed."¹⁸ While this may be true, it does not excuse or mitigate Zwerling's violations of the Act and the Rules.¹⁹ Nor does the fact that, according to Zwerling, "[n[o] radio station complained of interference" during the Station's decades of non-conforming operations.²⁰ Further, while inability to pay could justify reduction or cancellation of the proposed forfeiture, Zwerling has offered no evidence of an inability to pay other than a statement that it has served its community "with very little financial return."²¹ Finally, we reject Zwerling's assertion that, prior to the filing of the Station's most recent renewal application, the Commission never ordered or even suggested to Zwerling that the Station should cease its non-conforming operations.²² As we noted in the *NAL*, on at least two occasions, Commission staff informed Zwerling that STA was required to operate the Station at variance from its licensed nighttime parameters, and that it needed to file an application to modify the Station's authorization if it wished to continue to operate the Station non-directionally with reduced power.²³

8. We conclude that Zwerling willfully violated section 301 of the Act, and 73.1350, 73.1560(a)(1), 73.1635, 73.1690(b), and 73.1745(a) of the Rules. We therefore issue a forfeiture in the amount of twenty thousand dollars (\$20,000) as proposed in the *NAL*.

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission's rules, that Zwerling Broadcasting System, Ltd, **SHALL FORFEIT** to the United States the sum of twenty thousand dollars (\$20,500) for its willful violations of Section 301 of the Communications Act of 1934, as amended, and Sections 73.1350, 73.1560(a)(1), 73.1635, 73.1690(b), and 73.1745(a) of the Commission's rules.

10. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using CORES (the Commission's online payment system), or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. Below are instructions that payors should follow based on the form of payment selected:

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN). For

¹⁷ *Id.*

¹⁸ Response at 1.

¹⁹ See *NAL* at 4, n.26.

²⁰ Response at 1.

²¹ *Id.*

²² *Id.*

²³ *NAL* at 4, para. 8.

additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.

- Payment by credit card must be made by using the Commission's Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). After selecting the bill for payment, choose the "Pay by Credit Card" option. Please note that there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using the Commission's Registration System (CORES) at <https://apps.fcc.gov/cores/paymentFrnLogin.do>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL/Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). Finally, choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

11. **IT IS FURTHER ORDERED** that, pursuant to Section 73.3526(e)(10) of the Commission's rules, Zwerling Broadcasting System, Ltd, **SHALL PLACE** a copy of this *Forfeiture Order* in the online public inspection file of Station KSCO(AM), Santa Cruz, California (Facility ID No. 41594).

12. **IT IS FURTHER ORDERED** that copies of this *Forfeiture Order* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Michael Zwerling, Zwerling Broadcasting System, Ltd, 2300 Portola Drive, Santa Cruz, CA 95062.

FEDERAL COMMUNICATIONS COMMISSION

Albert Shuldiner
Chief, Audio Division
Media Bureau